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Bevin Smith

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tax court

ATTORNEYS FOR APPELLEE:

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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 49A04-0806-CR-320

January 22, 2009

MAY, Judge

Billy Masters appeals his conviction of invasion of privacy, a Class A misdemeanor.¹ Finding the evidence sufficient, we affirm.

FACTS AND PROCEDURAL HISTORY

Officer Michael Tharp of the Indianapolis Metropolitan Police Department was sent to the home of Chaun Ray to investigate a disagreement between Ray and her son. Upon arrival, Officer Tharp found three individuals in the home: Ray, her son, and Masters. Officer Tharp learned Ray had a protective order against Masters. Ray and Masters both knew about the protective order and Officer Tharp arrested Masters for violating it.

The State charged Masters with Class A misdemeanor invasion of privacy. After a bench trial, the court entered a judgment of conviction.

DISCUSSION AND DECISION

Our standard of review for sufficiency of evidence questions is:

When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences *supporting* the verdict. It is the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

¹ Ind. Code § 35-46-1-15.1.

Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007) (quotations, citations, and footnote omitted) (emphasis in original).

Masters was charged with invasion of privacy, which is defined in relevant part as knowingly or intentionally violating “a protective order to prevent domestic or family violence issued under IC 34-26-5” or “a no contact order issued as a condition of probation.” Ind. Code § 35-46-1-15.1.

Masters invites us to reverse his conviction in light of “the total context of what occurred.” (Appellant’s Br. at 8.) Officer Tharp testified Ray told him she had gone to Masters’ house to pick him up because she was having a disagreement with her son. Asserting he went to Ray’s house to help “diffuse a possibly dangerous situation,” (*id.* at 9), Masters would have us create a Good Samaritan defense to negate his violation of the protective orders.

We have addressed whether evidence is sufficient to support a conviction of invasion of privacy when the protected person consents to the defendant’s presence:

[L]ack of consent is not an element of invasion of privacy, and there is no element of that offense that [the protected person’s] consent would negate. *See* I.C. § 35-46-1-15.1. Nor would [the protected person’s] alleged consent preclude the infliction of violence the statute seeks to prevent. Specifically, [the protected person’s] alleged consent does not prevent violence nor does it preclude the violation of a court order.

Furthermore, Indiana Code § 34-26-5-11 provides, “If a respondent is excluded from the residence of a petitioner or ordered to stay away from a petitioner, an invitation by the petitioner to do so does not waive or nullify an order for protection.” When determining whether a party committed the act of invasion of privacy identified in Indiana Code § 35-46-1-15.1, we do not consider whether the victim knowingly ignored the

protective order but, rather, whether the defendant knowingly violated the protective order. *See* Ind. Code § 34-26-5-11. The protective order is between [defendant] and the State, not [defendant] and [the protected person]. Thus, even if [the protected person] had invited [the defendant] to the residence, [the defendant] would still have been in violation of the State's protective order against him.

Dixon v. State, 869 N.E.2d 516, 520 (Ind. Ct. App. 2007). Accordingly we decline Masters' invitation to reweigh the evidence in light of Ray's consent to his presence in her home.

Masters was not to have contact with Ray, but he was in Ray's home when Officer Tharp arrived. The evidence is sufficient to support his conviction. *See id.*, 869 N.E.2d at 521.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.